

EXHIBIT

11

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 June 10, 2008

18 10:13 a.m.

19 DEPOSITION of RAY LEU, taken by
20 Plaintiff, pursuant to Notice, held at the
21 offices of HOLLAND & KNIGHT LLP, 195
22 Broadway, New York, New York before Wayne
23 Hock, a Notary Public of the State of New
24 York.
25

R. Leu

A. Yes.

MR. SIMON: Objection to form.

Q. Yes?

A. Yes.

Q. Did TDX inspect the floor leveling process at the project for conformance to the contract documents?

A. Yes.

Q. Who did that from TDX?

A. Tony Mockler, Paul Citro.

Q. Just those two folks?

A. Yeah, they were our interior superintendents, assistant superintendents.

Q. And then the actual terrazzo installation, did someone from TDX inspect that for conformance with the contract documents?

A. Yes.

Q. And who did that?

A. The same two individuals, Tony Mockler and Paul Citro.

Q. Was it TDX's responsibility to advise the prime contractor if correction

R. Leu

work was required?

A. Yes.

Q. And who had that from TDX?

MR. SHAPIRO: Objection.

You can answer.

A. That would be Tony Mockler, Paul Citro, myself if I was made aware of it.

Q. Did TDX notify Trataros as to corrective work with respect to the terrazzo installation?

A. Yes.

Q. And what about notifying Trataros about corrective work with respect to floor leveling?

A. Yes.

Q. Do you know what the corrective work was with respect to the floor leveling?

A. There was areas that were removed and replaced.

Q. This is before terrazzo is installed over the floor leveling?

A. Yes.

Q. Did Trataros remove and replace

1 R. Leu

2 those areas of the floor leveling?

3 A. Yes.

4 Q. And with respect to the terrazzo
5 installation, the corrective work that was
6 required, was that done as well?

7 A. Yes.

8 Q. And what was the corrective work
9 that was required?

10 A. Some of the terrazzo was
11 replaced, there was some remedial work
12 that was done, epoxy injections,
13 installing besides epoxy injections and/or
14 fastening down the terrazzo by mechanical
15 means.

16 Q. With respect to the corrective
17 work on the floor leveling, was that
18 because of what they termed contamination
19 issues?

20 A. Yes.

21 Q. And what was the contamination
22 issue?

23 A. I don't know what was the actual
24 substance that was contaminating it. We
25 had Dayton Superior out there to take a

1 R. Leu

2 look at the areas that were -- that were
3 deficient and they made a recommendation
4 to remove it and it was removed.

5 Q. And that was the conclusion at
6 the time, was contamination; correct?

7 A. By Dayton, yes.

8 Q. Did TDX agree with that
9 conclusion?

10 A. Yes.

11 MS. BONACCI: We can do our lunch
12 break now. It's now 1:00.

13 MR. SHAPIRO: As close to two as
14 we can get?

15 MS. BONACCI: Yes.

16 (Lunch recess taken at 12:58
17 p.m.)

18 (Whereupon Ms. Young left the
19 proceedings)

20 (Whereupon Mr. DeFilippis
21 entered the proceedings)

1 R. Leu

2 recommended to DASNY by TDX that this
3 should be done?

4 A. Yes.

5 Q. And how did TDX verify that the
6 extra work was being performed?

7 MR. SHAPIRO: Objection.

8 You can answer.

9 A. There was time and material
10 tickets that were produced.

11 Q. What would happen, TDX would
12 review the tickets?

13 A. Yes.

14 Q. We're finished with that
15 exhibit, too.

16 Did TDX prepare exception
17 reports regarding the preparation of the
18 floor slabs to receive the finished
19 flooring?

20 A. No.

21 Q. So you're not aware of any
22 exception reports?

23 A. I'm not aware of any exception
24 reports.

25 Q. Relating to the slabs, the

1 R. Leu

2 concrete slabs?

3 A. Prior to installation of the
4 floor leveling.

5 Q. And did TDX prepare an exception
6 report regarding the floor leveling
7 process of the project?

8 MR. SHAPIRO: Objection.

9 You can answer.

10 A. No, we noticed -- we informed
11 Trataros that there was a problem with
12 some of the underlayment back in early
13 part of '01 and they came down, took a
14 look at it, and gave us a recommendation.

15 Q. Was there an exception report
16 that was ever prepared regarding that
17 situation?

18 MR. SHAPIRO: Objection.

19 You can answer.

20 A. I guess a memo to Trataros.

21 Q. And did TDX ever prepare any
22 exception reports regarding the terrazzo
23 installation at the project?

24 A. I'm not aware of any.

25 Q. Did TDX maintain a log of noted

1 R. Leu

2 floor leveling?

3 MR. SHAPIRO: Objection.

4 You can answer.

5 A. I do not know what the curing
6 time. I'd have to take a look at the
7 product data sheets.

8 Q. Mr. Leu, I'm going to show you
9 what's been marked as T8, which is the
10 Conflow product data sheet. I'm going to
11 ask you if you've seen that document
12 before.

13 A. Yes.

14 Q. Did you see it during the
15 project time frame?

16 A. Yes.

17 Q. Based on this product data
18 sheet, is Conflow's compressive strength
19 consistent with the requirements of the
20 specification for cementitious floor
21 leveling? And that's the document that
22 should be in front of you.

23 A. (Reviewing).

24 MR. SCHRECKINGER: T7?

25 MS. BONACCI: Yes, T7.

1 R. Leu

2 A. Can you repeat that question?

3 MS. BONACCI: Wayne, can you read
4 it back.

5 (Whereupon the requested portion
6 was read back by the reporter)

7 A. Yes.

8 Q. And with respect to bond
9 strength, is it consistent with the
10 requirements of the specification at T7?

11 MR. SHAPIRO: Objection.

12 You can answer.

13 A. Yes.

14 Q. Now I'm going to show you what's
15 been marked as T38. It's a material
16 safety data sheet.

17 Can you tell me if you've seen
18 that document before?

19 A. Yes.

20 Q. Can you tell me if the listed
21 ingredients are consistent with the
22 composition of the specified underlayment
23 in T7, the cementitious floor leveling?

24 MS. SMITH: Can I hear that
25 question again, please.

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, 2008.

Wayne Hock

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
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8 Plaintiff,

9 -against-

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11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 June 11, 2008

18 10:09 a.m.

19 CONTINUED DEPOSITION of RAY LEU,
20 taken by Plaintiff, pursuant to Notice,
21 held at the offices of HOLLAND & KNIGHT
22 LLP, 195 Broadway, New York, New York
23 before Wayne Hock, a Notary Public of the
24 State of New York.
25

R. Leu

Senior?

A. No, that's Jim Jones, Junior.

Q. So you and Jim Jones, Junior on behalf of TDX negotiated this change order?

MR. SHAPIRO: Objection.

A. Along with Antonio and DASNY and Trataros.

Q. My question is just on behalf of TDX because you didn't negotiate on behalf of the other parties, you would only do that on behalf of TDX; correct?

MR. SHAPIRO: Objection.

Q. Based on GC2-028, is Conflow now the specified material for the floor leveling?

MR. SHAPIRO: Objection.

You can answer.

MR. DENNIS: Join.

A. (Reviewing).

Yes.

Q. The change order pertains only to floors three to fourteen in the building; is that correct?

1 R. Leu

2 ever issued for repair work in connection
3 with contamination.

4 MR. SHAPIRO: Objection. If you
5 recall.

6 A. We issued a change order for
7 damage to terrazzo due to damages caused
8 by vandalism, broken terrazzo base, damage
9 by unidentified trades, but not
10 contamination.

11 Q. Was there a situation at the
12 project where the manufacturer came out to
13 look at the product and determined that
14 there was contamination?

15 A. Yes.

16 Q. And that related to Conflow?

17 A. Yes.

18 Q. Did that contamination create
19 any damage or need for any repair in
20 connection with the Conflow?

21 A. Yes.

22 Q. So contamination can require
23 repair work, contamination the likes of
24 what Bartec is referring to in the
25 April 9, 2001 letter?

1 R. Leu

2 MR. SHAPIRO: Objection.

3 MR. FROESSEL: Objection.

4 MR. SHAPIRO: You can answer.

5 A. We are not paid for a change
6 order to repair the Conflow for that
7 contamination or the flakiness of the
8 Conflow.

9 Q. You did not do it via change
10 order but you required repairs because of
11 the contamination; correct?

12 A. It was repaired.

13 Q. Who repaired it?

14 A. Trataros/Bartec.

15 Q. And who directed that the repair
16 occur?

17 A. It was directed that -- we
18 directed them to make the repair along
19 with Dayton Superior.

20 Q. You directed, meaning TDX, them
21 to make a repair?

22 A. Yes.

23 Q. Dayton Superior wouldn't have
24 the ability to direct them to do work on
25 the project.

1 R. Leu

2 Conflow as well as the terrazzo; no?

3 MR. FROESSEL: Objection.

4 A. No, to the Conflow.

5 Q. How long a time period did TDX
6 wait before permitting contractors to work
7 on the underlayment once it was placed?

8 MR. SHAPIRO: Objection.

9 You can answer.

10 MS. SMITH: What's the question?

11 I didn't hear it.

12 MS. BONACCI: Wayne, can you read
13 it back.

14 (Whereupon the requested portion
15 was read back by the reporter)

16 MS. SMITH: Thank you.

17 A. I don't remember the specific
18 time frame because, in general, Crocetti
19 followed right behind Bartec with their
20 work.

21 Q. When the upper floors of the
22 school opened in September, '01, do you
23 have knowledge as to whether there were
24 any restrictions on those floors as to
25 areas that the students could not use

1 R. Leu

2 because of the terrazzo flooring
3 situation?

4 MR. SHAPIRO: Objection.

5 You can answer.

6 A. No, there were no restrictions.

7 Q. When the school opened for use
8 in September, '01, how many levels of the
9 building were being used by the students?

10 A. Fourteen levels.

11 Q. And that would be the ground
12 floor through to fourteen?

13 A. Yes.

14 Q. Do you have any knowledge that
15 at that time any levels of the building
16 were not building used due to the terrazzo
17 flooring?

18 MR. SHAPIRO: Objection. Asked
19 and answered.

20 You can answer.

21 A. No.

22 Q. In the year 2001, did DASNY
23 direct TDX to take any remedial actions
24 regarding terrazzo?

25 MR. FROESSEL: Objection.

R. Leu

Superior?

A. No, I did not.

Q. Do you know if anybody --

MS. SMITH: Strike that.

Q. Are you able to identify who companies met with Dayton Superior?

A. No, I do not know.

Q. Do you know whether TDX met with Dayton Superior?

A. No, I do not know because there was no minutes taken of the meeting or a sign-in sheet.

Q. Do you know who would have that information?

A. Possibly Trataros.

Q. Is there anybody at TDX that would know that information?

A. I do not know.

Q. Now, I understood your testimony to say that there was a problem with delamination and Conflow in the spring of 2000 or 2001?

A. 2001.

Q. And what was the --

1 R. Leu

2 MS. SMITH: Strike that.

3 Q. How did you know that there was
4 a problem with the Conflow?

5 A. Because it was brought to our
6 attention by our field superintendent, one
7 of our field superintendents, and Mr.
8 McCullough wrote a letter to Trataros.

9 Q. What was it about the field
10 conditions that caused your superintendent
11 to say that there was a problem
12 specifically with the Conflow?

13 A. They noticed some flakiness of
14 the Conflow.

15 Q. And this was prior to the
16 terrazzo floor being put down?

17 A. In that particular area.

18 Q. And what particular area are we
19 talking about?

20 A. Again, I'd have to get that
21 memorandum out to see what area was --
22 that we wrote about, that particular
23 memorandum.

24 Q. Was there any --

25 MS. SMITH: Strike that.

R. Leu

Q. Do you know if there was any analysis taken of the Conflow at that time?

A. I do not know if there was any analysis taken.

Q. And was there any other time that a problem regarding the Conflow, as it was originally brought to your attention or TDX's attention back in the spring of 2001, did that ever occur again?

MR. SHAPIRO: Objection.

You can answer.

A. Not that I'm aware of.

Q. Do you know if any pictures were taken during this inspection with Dayton?

A. No, I'm not aware of any.

Q. Now, as I also understand your testimony, as you sit here today you're not able to tell me what areas that there was a delamination or problem with the terrazzo and where Conflow was used; is that correct?

A. That's correct.

Q. Are there any areas that

1 R. Leu

2 by the college into site B is behind
3 schedule and that's what I mean by the
4 project is behind schedule.

5 Q. And the completion date is not
6 going to be met if things continue to
7 proceed in the manner which led up to it
8 being behind schedule; correct?

9 MR. SHAPIRO: Objection.

10 You can answer if you
11 understand.

12 MS. SMITH: No speaking
13 objections, please.

14 A. I'm not quite sure I understood
15 the question.

16 Q. Of course.

17 What was the completion date?

18 A. The completion date is September
19 of '01 for the college to move in.

20 Q. And was the college open on
21 September of 2001?

22 A. Yes.

23 Q. So in looking at Exhibit T40,
24 what did TDX do in order to ensure that
25 the completion date would be met?

R. Leu

A. We put contractors, certain contractors on extended work days.

Q. Anything else?

A. We expedited the work of the underlayment for the terrazzo.

Q. When you say that you expedited the work for the underlayment of terrazzo, how do you expedite the work for the underlayment of terrazzo?

A. In some instances, we changed the material to be used.

Q. Was the September, 2001 the original completion date?

A. No, it wasn't.

Q. What was the original completion date?

A. I don't recall.

Q. Was it before or after September of 2001?

A. Before.

Q. And in expediting the work for the underlayment of terrazzo, did you also put pressure on your contractors in order to speed up the job?

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of June, 2008.

Wayne Hock

VERITEXT REPORTING COMPANY

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 June 20, 2008

18 10:08 a.m.

19 CONTINUED DEPOSITION of RAY LEU,
20 taken by Plaintiff, pursuant to Notice,
21 held at the offices of HOLLAND & KNIGHT
22 LLP, 195 Broadway, New York, New York
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24 State of New York.
25

1 R. Leu

2 with relation to the underlayment or
3 installation of the terrazzo flooring
4 prior to July, 2000?

5 MR. FROESSEL: Objection.

6 You can answer.

7 A. No.

8 Q. And does your testimony apply to
9 levels B1, B2, and B3 as well as the other
10 levels of the Baruch College project?

11 MR. FROESSEL: Objection.

12 You can answer.

13 A. Yes.

14 MS. RAICUS: Thank you. No more
15 questions.

16 MR. MILLER: I'd like to have
17 these marked as T71 and T72. T71 is
18 going to be documents with Bates
19 numbers CR 1184 through CR 1188 and
20 the next one's going to be T72. It's
21 going to be CR 0920 through CR 0952.

22 (Whereupon, a facsimile dated
23 March 8, 2001 was marked Exhibit T71
24 for identification.)

25 (Whereupon, a letter dated

1 R. Leu

2 August 28, 2003 was marked Exhibit T72
3 for identification.)

4 EXAMINATION BY

5 MR. MILLER:

6 Q. If you look at page CR 1187,
7 last time we were together you were asked
8 some questions about notification of
9 Trataros in the spring of 2001 about
10 problems with delamination and Conflow.
11 We didn't have the benefit of having that
12 notification with us at the time.

13 My question is going to be
14 whether or not the letter dated
15 February 28, 2001 that appears at Bates
16 pages CR 1187 and 188 is that notification
17 referred to in your prior testimony.

18 MR. FROESSEL: Objection to the
19 form.

20 You can answer.

21 A. Yes.

22 Q. Let me direct your attention to
23 T72.

24 I believe your prior testimony
25 had also been -- do you want to take a

1 R. Leu

2 we're pouring one inch thick, I'd like to
3 know what is the added dead weight to see
4 if there's any structural concerns. This
5 is the conversation that I had with Dan
6 from Conspec.

7 Q. And was it a long conversation?

8 A. It was a fairly short
9 conversation.

10 Q. When you were done with that
11 conversation, you were comfortable with
12 how you were going to proceed in
13 connection with the project?

14 A. Yes.

15 Q. Do you have knowledge if KPF had
16 contacted the manufacturer at any point in
17 time in connection with the Baruch
18 project?

19 MR. FROESSEL: Objection to the
20 form.

21 A. I do not know.

22 Q. There's an Exhibit T71 that got
23 marked today by Mr. Miller. I'm going to
24 show it to you so you can take another
25 look through it, but I just have one

1 R. Leu

2 question.

3 Mr. Miller was showing you this
4 document and asking you about a time frame
5 of notifying Trataros regarding a problem
6 with an aspect of the terrazzo.

7 At this point in time -- my
8 question to you is very simple.

9 This problem was concluded this
10 was a contamination issue. Was it not
11 rectified?

12 A. Yes.

13 Q. So it was fixed, remedied to
14 TDX's satisfaction at that point in time?

15 A. Yes.

16 Q. Mr. Platek was asking you some
17 questions regarding contractors walking on
18 the terrazzo and the underlayment.

19 Can you tell me, were other
20 contractors scheduled to follow behind the
21 floor finishes?

22 A. No. There may have been some
23 work that they had not finished but it
24 definitely was not scheduled to be done
25 afterwards. Various trades, including

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That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of June, 2008.

Wayne Hock